

H-3101-1 - ISSUANCE OF LEASES

III. Coordination with Other Surface Management Agencies
and Private Surface Owners

Keywords

A. Split Estate Lands

SPLIT ESTATE
LANDS

Lands are referred to as split estate lands when the surface estate has been segregated from the Federal mineral estate with the title of the surface estate conveyed to another party. Usually, split estate lands occur when the surface estate is patented with a reservation of the mineral estate to the Federal Government. The BLM is responsible to ensure that authorized mineral development meets all statutory and regulatory requirements. Activities and use of the surface are not subject to the Federal Land Policy and Management Act (FLPMA) planning requirements, and the BLM does not have authority under FLPMA over use of the surface by the surface owner. However, the BLM is required to analyze in land-use planning and NEPA documents the impacts to surface resources, uses, and users from any BLM-authorized oil and gas development. Therefore, the NEPA responsibilities on split estate lands are basically the same as for Federal surface. See Manual Section 3101.91 for further discussion of the BLM responsibilities for split estate lands.

If a surface owner refuses access for needed entry to obtain information, e.g., information on cultural or historic resources or on threatened or endangered species, previous inventories or sufficient information on the surrounding area may be available. Otherwise, it may be necessary to obtain a court order to be allowed access. If an order from the U.S. District Court is needed, contact the appropriate Regional or Field Solicitor's Office for assistance. Generally, two documents are required to file the court action. These documents are a copy of the original patent or document that segregated and conveyed the surface estate and a signed, notarized affidavit for each BLM employee who was refused entry. The affidavit must explain the reason or reasons why entry is needed for each person, the dates and times the surface owner was contacted, and the date entry was refused.

SURFACE OWNER
REFUSAL
FOR ACCESS

H-3101-1 - ISSUANCE OF LEASES

B. Coordination with Other Surface Management AgenciesKeywords

As the Federal Government's mineral leasing agent, the BLM is required to ensure that any NEPA analysis conducted by another agency meets the BLM requirements. The BLM has agreements with certain other SMA's which provide for BLM participation in that agency's planning process and/or NEPA analysis documents, such as with the FS. This eliminates the necessity for the BLM to develop its own NEPA documentation. Coordination of analyses for leasing actions by the BLM as a cooperating agency with other SMA's under the provisions of 40 CFR 1506.3 is important to meet the BLM and NEPA requirements. The NEPA regulations state that a cooperating agency, such as the BLM, may adopt the environmental analysis documentation of a lead agency when, after an independent BLM review of the statement, the BLM concludes that its comments and suggestions have been satisfied. The BLM must ensure that the standards and requirements of the supplemental program guidance for energy and mineral resources (see Manual Section 1624.2 and Handbook 1624-1) are met to adequately support oil and gas leasing decisions. If the BLM was not a cooperating agency, it may adopt another SMA's environmental analysis documentation as long as the NEPA, Departmental, and BLM guidelines are met. If the BLM has not adopted the NEPA analysis written by the SMA, the BLM must prepare the analysis to document the stipulations required by the SMA for a lease parcel. Any lease sale parcels or presale noncompetitive offers for lands administered by another SMA on which NEPA analysis has not been completed shall be placed in suspended status until the NEPA and BLM requirements have been completed to properly document the stipulations that are to be attached to the parcel. If the party making the noncompetitive offer or informal expression of interest objects to the delay in processing the lands for leasing or raises other concerns, direct them to the appropriate SMA.

COORDINATION
WITH OTHER
SMA'S1. Lands Administered by the Forest Service.

An Interagency Agreement (IA) between the FS and the BLM for oil and gas leasing was signed in November 1991. A separate agreement for oil and gas operations also was signed in November 1991. See Appendix 3 for copies of these two agreements. The purpose of the agreements is to ensure cooperative, timely, and efficient action by both agencies with respect to oil and gas actions on National Forest System lands, and to establish procedures in accordance with the Federal Onshore Oil and Gas Leasing Reform Act.

COORDINATION WITH
FOREST SERVICE

H-3101-1 - ISSUANCE OF LEASES

Keywords

The IA for leasing between the BLM and FS addresses the leasing analyses and the coordination of analyses between the two agencies. The leasing analysis for any split estate lands that are within the boundaries of a National Forest System unit is to be conducted as part of the analysis completed for the FS land unit.

The third section of the leasing IA requires the BLM State Office Adjudication to provide the appropriate FS office a copy of the Notice of Competitive Lease Sale at least 30 days prior to the final printing and posting of the sale notice to allow the FS 30 days to review and respond that the correct stipulations are being used for each sale parcel on FS lands.

FOREST SERVICE
REVIEW OF
SALE NOTICE
PRIOR TO
OFFICIAL POSTING

The IA also requires the BLM to provide copies of leases on FS lands to the FS within 60 days after lease issuance, and to notify the appropriate FS office within 60 days of relinquishment, termination, expiration, cancellation, unitization, or extension of leases.

NOTIFICATION OF
LEASING ACTIONS
TO FOREST SERVICE

2. Lands Administered by the Bureau of Reclamation. In accordance with the IA between the BLM and the Bureau of Reclamation (BR) dated March 25, 1983, the BLM will not issue permits, leases, or licenses on lands under the BR's management without the BR's consent and concurrence on all conditions and stipulations. When leases are issued, a stipulation will generally be used to protect environmental and resource values that the BR is charged to protect. The IA requires the BLM State Offices to request that the BR determine whether leasing is permissible and, if so, to provide the required stipulations. The BR will respond to requests for leasing clearance within 60 days when adequate records are readily available. When adequate records are not available, the BR will provide an interim progress report within 30 days. (See Appendix 4 for the applicable section of the BLM/BR IA.)

COORDINATION
WITH BUREAU OF
RECLAMATION

3. Lands Administered by the National Park Service. A Memorandum of Understanding (MOU) between the BLM and the National Park Service, dated January 29, 1987, covers planning and program coordination. The MOU is a basic "umbrella" agreement providing for coordination and cooperation between the two agencies in respect to many programs, including oil and gas resource management.

COORDINATION
WITH NATIONAL
PARK SERVICE

H-3101-1 - ISSUANCE OF LEASES

Keywords

The Department of the Interior policy, however, is that unless Congress has specifically declared a unit of the National Park System to be open to leasing or unless drainage of oil and gas is occurring, leasing shall not be considered (Federal Register, Vol. 52, No. 7, Page 1225, published January 12, 1987). Certain other National Park System lands open to leasing are addressed at 43 CFR 3109.2. However, certain areas in the Lake Chelan and Ross Lake National Recreation Areas where the leasing of minerals formerly had been allowed were withdrawn from mineral leasing by Section 206 of the Act of November 16, 1988.

NATIONAL PARK
SYSTEM LANDS
NOT AVAILABLE
EXCEPT FOR
DRAINAGE CASES
AND CERTAIN
OTHER AREAS

4. Lands Administered by the Fish and Wildlife Service. An agreement between the BLM and the Fish and Wildlife Service (FWS) was implemented December 24, 1986. Since leasing is not allowed on FWS lands in the lower 48 States by Departmental policy, oil and gas was not covered in this basic interagency agreement. See Manual Section 3101.51C for drainage situations involving FWS or coordination lands.

COORDINATION WITH
FISH AND WILDLIFE
SERVICE

5. Lands Administered by the Department of Defense. For lands administered by the DOD, the BLM must obtain consent to lease in accordance with the Engle Act (43 U.S.C. 158). If the DOD does not concur with leasing, it must provide the rationale for such a determination. An MOU was signed between the BLM and DOD on January 26, 1984. The purpose of the MOU is to establish procedures to facilitate the coordination efforts between the two agencies in the exploration, development, and production of oil, gas, and geothermal resources on DOD-administered lands. Under the terms of the MOU, the BLM is to undertake the following procedures:

COORDINATION WITH
DEPARTMENT OF
DEFENSE

a. Upon receiving a request from the Secretary of a Military Department or the Secretary's duly authorized representative, or from industry that certain lands be offered for lease, or at its own initiative deciding to offer certain lands, the BLM is to determine whether the lands in question are within areas designated by DOD as incompatible for exploration, development, and production of oil and gas or geothermal resources where such designations by the DOD have been made.

MILITARY LANDS
REVIEW FOR
COMPATIBILITY
OF OIL AND GAS
DEVELOPMENT

H-3101-1 - ISSUANCE OF LEASES

Keywords

b. The BLM is to request oil and gas lease applicants to specify the name of the installation and the acquisition tract number of the land covered by the application/offer to simplify the DOD title search.

c. The BLM is to ensure the NEPA compliance

d. The BLM is to request a title report and request for consent to lease from the appropriate DOD officials.

e. The BLM is to forward a copy of the lease upon issuance to the appropriate DOD officials.

Under the terms of the MOU, the DOD is to provide the BLM information designating which areas under its jurisdiction are incompatible for exploration, development, and production of oil and gas or geothermal resources. Upon request, the DOD also is to provide the BLM any environmental and cultural resource information that the DOD has available. The DOD will provide title reports, consent, and stipulations for lease issuance, or reasons for withholding lease consent. No leases may be issued for any DOD-administered lands without the stipulations required by the DOD.

DOD PROVIDES
ENVIRONMENTAL
INFORMATION
AVAILABLE

In conjunction with the Department of Defense policy to promote the optimal use of its lands under the multiple-use principle, the Department of the Army is to make all of its lands available for oil and gas leasing, except at installations or civil works projects specifically excluded from such leasing upon the recommendation of the Chief of Staff or Chief of Engineers, with approval of the Secretary of the Army. Such leasing may be made subject to stipulations, restrictions, or prohibitions limiting on-post or on-project surface occupancy or the lessee's operations. Any such conditions shall be imposed only to the extent necessary to protect military operations, National defense activities, civil works activities, or the public interest. The standardized Department of the Army stipulations have been approved for use by base commanders (see Appendix 5). Stipulations may be selected from this list by base commanders without further discussion. For any additional stipulations, the base commanders is to be encouraged to follow the uniform stipulation formats adopted by the BLM.

ARMY DEPARTMENT
LEASING
PROVISIONS AND
STANDARD LIST
OF STIPULATIONS

H-3101-1 - ISSUANCE OF LEASES

Keywords

6. Supplemental Agreements Between SMA's and BLM State Offices. The BLM State Offices are encouraged to develop supplemental IA's and MOU's with regional offices of SMA's under the umbrella national IA's and MOU's. Some State Offices have entered into such regional agreements, such as the Oregon State Office with the Bonneville Power Administration, and the Montana State Office with the Pacific Northwest Region of the Bureau of Reclamation. These regional IA's and MOU's are to be incorporated into BLM State Office Manual and Handbook supplements to Manual Section 3101 or this Handbook 3101-1.

SUPPLEMENTAL
AGREEMENTS
BETWEEN BLM STATE
OFFICES AND SMA's